

No. 10804

Vol
2391

United States
Circuit Court of Appeals

For the Ninth Circuit.

CHESTER BANKS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

OCT 4 - 1944

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

MR. JEFFREY HEIMAN,

415, 1411 Fourth Ave. Bldg.,
Seattle, Washington,

Attorney for Appellant.

MR. J. CHARLES DENNIS,

United States Attorney,
1012 U. S. Court House,
Seattle, Washington.

Attorney for Appellee.

MR. ALLAN POMEROY,

Assistant United States Attorney,
1012 U. S. Court House,
Seattle, Washington.

Attorney for Appellee. [1*]

United States District Court
Western District of Washington
Northern Division

November Term, 1943

No. 46311

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER BANKS,

Defendant.

INDICTMENT

United States of America
Western District of Washington
Northern Division—ss.

Vio. Sections 2591a and 2593a Title 26, U.S.C.A.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present: [2]

Count I.

(2591a-26-Sale)

That Chester Banks, on or about the 25th day of September, 1943, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously transfer a certain quantity of marihuana, to-wit, One (1) Marihuana

Cigarette, not in pursuance of a written order of the person to whom such marihuana was transferred, and not on a form issued in blank for that purpose by the Secretary of the Treasury; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

Count II.

(2591a-26-Sale)

That Chester Banks, on or about the 10th day of October, 1943, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously transfer a certain quantity of Marihuana, to-wit, Two (2) Marihuana cigarettes, not in pursuance of a written order of the person to whom such marihuana was transferred, and not on a form issued in blank for that purpose by the Secretary of the Treasury; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [3]

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

Count III.

(2593a-26-Possession)

That Chester Banks, on or about the 10th day of October, 1943, at Seattle, in the Northern Di-

vision of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully and feloniously have in his possession a certain quantity of Marihuana, to-wit, Two (2) Marihuana Cigarettes, not in pursuance of a written order form and without having registered and paid the special tax as required and imposed by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. CHARLES DENNIS

United States Attorney

[Endorsed]: A true bill, Stephen S. Floe, Foreman. J. Charles Dennis, United States Attorney.

ALLAN POMEROY

Assistant United States Attorney

[Endorsed]: Presented to the Court by Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court, Mar. 15, 1944. Judson W. Shorett, By Lee L. Bruff, Deputy. [3a]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above Entitled Cause, Find the defendant, Chester Banks

Is guilty as charged in Count I of the Indictment herein;

Is guilty as charged in Count II of the Indictment herein;

Is guilty as charged in Count III of the Indictment herein.

Dated at Seattle, Washington this 16 day of May, 1944.

L. B. HATCH

Foreman

[Endorsed]: Filed May 16, 1944. [4]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes Now the defendant herein and move the Court for a new trial on the grounds:

1. Error of law occurring at the trial and excepted to by the defendant.

2. That the evidence is insufficient as a matter of law to prove the guilt of the defendant.

PAUL D. COLES

Attorney for Defendant

Office and P. O. Address:

1410 Hoge Building

Seattle 4, Washington.

[Endorsed]: Filed May 18, 1944. [5]

[Title of District Court and Cause.]

HEARING & ORDER CONTINUING

Now on this 22nd day of May, 1944, Allan Pomeroy, Assistant United States Attorney appearing for the plaintiff and Attorney Paul Coles appearing for the defendant this cause comes on before the Court for hearing on the defendant's motion for New Trial. The defendant is present. Argument is had on said motion and the motion is denied, exception allowed. On request of the defendant's counsel, imposition of sentence on the verdict of Guilty is continued to 9:30 A.M. May 27, 1944. Mr. Pomeroy makes no objections.

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United States District Court
Western District of Washington
Northern Division

No. 46311

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER BANKS,

Defendant.

JUDGMENT AND SENTENCE

Comes now on this 29th day of May, 1944, the

said defendant Chester Banks, with his attorney, into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding defendant guilty on Counts I, II and III, it is

Considered, Ordered and Adjudged by the Court that the said defendant Chester Banks is guilty as charged in Count I, II and III of the Indictment and that on Count I of the Indictment he be committed to the custody of the Attorney General of the United States for imprisonment in the United States Penitentiary, McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Two (2) years.

It is further Considered, Ordered and Adjudged by the Court that the said defendant Chester Banks on Count II of the indictment, be committed to the custody of the Attorney General of the United States for imprisonment in the United [7] States Penitentiary at McNeil Island, Washington, for the period of Two (2) years;

Provided, however, that the execution of the sentence on Count II of the indictment shall run

concurrently with and not consecutively to the execution of the sentence imposed on Count I of the indictment.

It is further Considered, Ordered and Adjudged by the Court that imposition of sentence herein in Count III of the indictment be suspended for a period of One (1) year, effective upon the expiration of the sentence imposed on Counts I and II herein, during the defendant's good behavior and during which time said defendant shall be placed upon probation as provided by the statutes of the United States relative to probation until further order of the Court; and further upon the express condition that said defendant does not during said one-year probationary period violate any laws of the United States or of any state or community where he may be, and that he does not, directly or indirectly, have any participation or contact with marihuana or the use thereof or with those using, possessing or trafficking in the same, and that he does not engage, directly or indirectly, in the tavern business; and that during such period he shall report regularly to the United States Probation Officer at the times and in the manner said officer shall direct; and that if the said defendant during said period so complies with all of the terms relating to the suspension of imposition of sentence and probation granted, upon the expiration of the said one-year probationary period, the said defendant shall be released from all liability under Count III and said Count shall be dismissed.

It is the recommendation of the Court that the [8] suspension of imposition of sentence on Count III shall not in any way interfere with the good time granted or affect the parole rights of the defendant.

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden of the United States Penitentiary, McNeil Island, Washington, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done in Open Court this 29th day of May, 1944.

LLOYD L. BLACK

United States District Judge

Presented by:

ALLAN POMEROY

Asst. United States Attorney

Violation of Sections 2591a & 2593a, Title 26, U.S.C.A. (Marihuana Tax Act of 1937 sale and possession of marihuana)

[Endorsed]: Filed May 29, 1944. [9]

[Title of District Court and Cause.]

CONSENT TO SUBSTITUTION OF
ATTORNEY

Comes Now Paul D. Coles and hereby consents to the substitution of Jeffrey Heiman as attorney of record for Chester Banks, the defendant herein.

Dated at Seattle Washington this 25th day of May, 1944.

PAUL D. COLES

[Endorsed]: Filed May 29, 1944. [10]

[Title of District Court and Cause.]

ORDER ALLOWING SUBSTITUTION
OF ATTORNEY

This Matter having come on regularly before the undersigned one of the Judges of the above entitled Court. It appearing to the Court that Paul D. Coles has filed herein his consent to have Jeffrey Heiman substituted as attorney for the Defendant herein.

Now therefore it is hereby Ordered that said substitution be and the same is hereby allowed.

Done In Open Court this 29th day of May, 1944.

LLOYD L. BLACK

Judge

Presented by:

JEFFREY HEIMAN

Approved:

CHESTER BANKS

[Endorsed]: Filed May 29, 1944. [11]

[Title of District Court and Cause.]

NOTICE OF APPEAL

1. Name and Address of Appellant is Chester Banks, 673 Seattle, Washington.

2. The name and address of appellant's attorney is Jeffrey Heiman 1411 Fourth Avenue Building, Seattle, Washington.

3. The offense with which the appellant is charged is Section 2591a and 2593a Title 26, U.S. C.A.

4. The appellant's motion for a new trial was denied on the 22nd day of May, 1944.

5. Sentence was imposed on the 29th day of May, 1944 and the Court sentenced the Defendant to Two Years at McNeil's Island on counts I and II of the indictment to run concurrently and gave the Defendant one year probation on Count III., to commence after the service of sentence on Counts I and II.

6. The appellant is now out on \$4,000.00 bail.

I, the above named appellant, through my attorney Jeffrey Heiman hereby appeal to the United States Circuit Court of Appeals for the 9th Circuit from the Judgment of the above entitled Court above mentioned on the grounds set forth below.

CHESTER BANKS

Appellant

Attorney for the Appellant

JEFFREY HEIMAN

Copy Rec'd. 5/29/44.

ALLAN POMEROY

Asst. U. S. Atty. [12]

GROUNDS OF APPEAL

1. The appellant appeals from the ruling of the lower Court in failing to strike the testimony of the witness Love to which ruling an exception was taken and allowed.

2. The Court failed to sustain the Defendant's challenge to the legal sufficiency of the evidence made at the conclusion of the Government's case and at the conclusion of the introduction of all the evidence, which exception was allowed.

3. The Court failed to instruct the Jury to return a verdict of Not guilty in behalf of the Defendant on all counts of the indictment.

4. The Court erred in failing to grant the Defendant a New Trial after motion for New Trial was timely made and argued to the Court.

5. The Verdict of the Jury was not supported by the evidence.

6. The Court erred in not granting the Defendant's motion in arrest of judgment.

JEFFREY HEIMAN

Attorney for the appellant

[Endorsed]: Filed May 29, 1944. [12a]

[Title of District Court and Cause.]

ORDER FIXING TIME FOR SETTLING
BILL OF EXCEPTIONS

Now on this 2nd day of August, 1944, Allan Pomerooy, Assistant United States Attorney appearing

for the plaintiff and Attorney Jeffrey Heiman appearing for the defendant this case comes on before the Court, and the Court now fixes 9:30 A.M. August 28, 1944 as the time for settling the bill of exceptions for the record on appeal, both counsel agreeing thereto.

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[Title of District Court and Cause.]

ORDER TRANSMITTING EXHIBITS

This matter having come on regularly before the undersigned, one of the Judges of the above entitled Court; it appearing to the Court that a stipulation has been entered into herein signed by attorneys for the United States Government and for the Defendant herein; the Court being in the premises duly advised,

It is Hereby, Ordered, Adjudged and Decreed that the original exhibits herein be *setnt* to the Circuit Court of Appeals in connection with the appeal herein.

Done In Open Court this 28 day of August, 1944.

LLOYD L. BLACK

Judge

Presented by:

JEFFREY HEIMAN

Attorney for Defendant

O. K.:

J. CHARLES DENNIS

U. S. Atty.

ALLAN POMEROY

Asst. U. S. Atty.

[Endorsed]: Filed August 28, 1944. [14]

[Title of Court and Cause.]

PRAECIPE

To the Clerk of the Above-entitled Court:

You will please certify to the Circuit Court of Appeals the following:

I. The Indictment. II. Verdict of Jury. III. Motion for New Trial. IV. Notice of Appeal and Grounds for Appeal. V. Consent to substitution of attorneys. VI. Order allowing substitution of attorney. VII. Judgment and Sentence. VIII. Minute entry fixing time for Settling Bill of Exceptions.

JEFFREY HEIMAN

Attorney for Appellant.

Copy Rec'd 8-29-44

J. CHARLES DENNIS,

U. S. Attorney

Received Office of U. S. Attorney, Aug. 29, 1944,
Seattle, Wash. Ref. to.....

[Endorsed]: Filed Aug. 29, 1944. [15]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
Western District of Washington—ss:

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 15, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by praecipe of counsel filed *ans* shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, together with the original Bill of Exceptions, and Assignment of Errors, sent up as part hereof, constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I transmit herewith as part of the record on appeal in this cause the original Bill of Exceptions and Assignment of Errors.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or re-

turn to the United States [16] Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act of Feb. 11, 1925) for making record, certificate or return: 33 folios at 15c	\$ 4.95
Appeal fee. (Section 5 of Act)	5.00
Certificate of Clerk to Original Exhibits....	.50
Certificate of Clerk to Record on Appeal....	.50
<hr/>	
Total	\$10.95

I hereby certify that the above amount has been paid to me by the attorney for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 2d day of September, 1944.

[Seal]

JUDSON W. SHORETT,
Clerk, United States District
Court for the Western Dis-
trict of Washington,
By TRUMAN EGGER
Chief Deputy. [17]

[Title of District Court and Cause.]

PROPOSED BILL OF EXCEPTIONS

Comes now the Defendant above named and by his attorney Jeffrey Heiman, submits the following Proposed Bill of Exceptions herein. Be It Remembered that heretofore, on to-wit, the 16th day of May 1944, this case came on for trial before the

Honorable Loyd L. Black, one of the Judges of said Court and a Jury, duly impaneled and Sworn, the Plaintiff appearing by Allan Pomeroy, Ass't United States Attorney and the Defendant appearing by his attorney Paul D. Coles and the following proceedings were had.

The Jury was impaneled and sworn.

Opening statements were made by respective counsel.

TOWNSEND DAVIDSON

was called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

“My name is Townsend Davidson and at the present time I am a musician in the City of Seattle. I have been so employed for about one month. I am 32 years old. I am charged in this Court with possession of marijuana. Prior to the time I was charged and arrested I was with the General Electric doing radar work. I was an expert at this. I know Chester Banks. I first met him about the last part of September, 1943. I have been an occasional user of marijuana. I have used it for many years about ten or twelve. I met Chester Banks at the Seagull Tavern on Jackson Street. I believe he is the owner of the tavern. I first met him outside the tavern. A colored boy introduced us. We had a conversation about marijuana at that time. I asked him if he could sell some and he stated that he could get some. He got a marijuana cigar-

(Testimony of Townsend Davidson.)

ette and we three got in my car and smoked it. We drove up Jackson and around the block a few times.

Q. Did you have a further conversation about marijuana with Chester Banks?

Mr. Coles: Just a minute. I object to that and ask that the Court strike the answer that he smoked a marijuana cigarette. I don't think he has shown he is an expert to testify it was a marijuana cigarette. He said he used marijuana 10 or 12 years, but I don't think that that makes him competent to testify as an expert as to whether or not a cigarette is marijuana or not unless there is something more shown than that.

The Court: Objection overruled.

Mr. Coles: Exception.

The Court: Exception allowed.

The Witness continued: I asked him if he could get anymore and he said that he could at a later date and that I should stop in and see him at the Seagull, which I did. This was in the latter part of September, 1943. I next saw the Defendant a week or so later at the Sea Gull. With just the two of us present in the evening I asked him if I could buy some marijuana cigarettes and he said yes. So I bought two marijuana cigarettes from him.

Mr. Coles: I object on the ground that he is not competent to testify that they were marijuana.

The Court: Objection overruled.

"I paid him \$2.00 for two cigarettes. I went back a third time and asked him for some about the first

(Testimony of Townsend Davidson.)

part of October and a colored boy named Leonard Love was present at that time with the Defendant. I asked him, it was in the evening, if he had any marijuana to sell and he introduced me to Mr. Love and said in the future Love would take care of the sales. That is all the conversation I had with the Defendant at that time. I had another conversation with him about the middle or latter part of October at the Sea Gull, Mr. Jenkins was present at that time. Love wasn't there and I asked Mr. Banks about buying some more and he introduced me to Jenkins and said that Jenkins would take care of it instead of Love. Banks didn't say that Love had lost his connection with Chester. I purchased marijuana from Love and Jenkins. In the latter part of September when I got the one cigarette from Banks I paid him one dollar. In the first part of October I bought two from him for \$2.00. I did not see where he was keeping them or where he got them. He had them in his hand. After I was arrested in the Marshall's office I had the following conversation with the Defendant. He stated that he knew I had made a statement about him and that I would get no place by admitting anything or involving him, and that I should deny the story and state that it was made under stress and that I only went up there to talk music with him and drank some particular brand of wine which he had. He told me to say that I was afraid that I might be beat up by the police.

(Testimony of Townsend Davidson.)

Cross Examination

By Mr. Coles:

I am not a government agent and have not been paid by the narcotics department or the government. I was arrested by the Seattle Police on Feb. 10th in connection with a coat and jacket and having the keys in my possession, to some woman's room. Up until then I had not mentioned marijuana to anyone. I told the officers that I had marijuana in my room and they took me up to the room and found it. I was not charged by the police and the case against me about the coat was dropped. I bought some marijuana from Mr. Banks in September. I am charged by the government with having marijuana in my possession. I have decided to plead guilty and I have naturally discussed the matter with the government agents. My case has not come up as yet.

I never saw Mr. Banks before the latter part of September, and on the first occasion I saw him I purchased marijuana. I had been in the Sea Gull before. I smoke marijuana with colored people occasionally. Not habitually just occasionally. I was drinking a little on the occasion in September. I don't remember the name of the man that introduced me to Mr. Banks. I had seen that man before on Jackson Street. I do not remember his name. I have known Love only since September 1943 and I met him at the Seagull.

(Testimony of Townsend Davidson.)

Re Direct Examination

By Mr. Pomeroy:

“I have been out on bond since my arrest and have not used marijuana since then. The last time I used marijuana was last January.

Recross Examination

By Mr. Coles:

“I do not believe that using marijuana has affected me memory.”

LEONARD LOVE

was called as a witness in behalf of the Plaintiff and testified as follows; after being duly sworn:

Direct Examination

By Mr. Pomeroy:

“My name is Leonard Love and I live at 1046½ Jackson Street in Seattle. I am now working at the Shipyards. I know Mr. Townsend Davidson. I have been indicted in this Court, charged with transfer and possession of marijuana. I have been indicted in this Court, charged with transfer and possession of marijuana. I have pleaded guilty to the charge and have not been sentenced yet. I know Chester Banks since September 1943. He owned a tavern The Seagull. I didn't work for him in the beer tavern and I didn't work for him any place. In the early part of October 1943 I heard a conversation between Banks and Davidson. Davidson came to me and said Chester Banks sent him

(Testimony of Leonard Love.)

to get some marijuana. I gave it to him and I had gotten it from Chester Banks. I had given it to him at other times also, which I had gotten from Chester Banks. I did that for Mr. Banks for a couple of months until we had a fight, when I quit fooling around with him. Davidson gave me a dollar a stick. I gave Mr. Banks over half of it. The reason for my argument with Chester Bank's was I had spent the money and couldn't pay him. In two months Chester gave me fifty sticks at a time. I don't know much but I got fifty a few times from him.

Cross Examination

By Mr. Coles:

"I have never used marijuana cigarettes never smoked one."

Mr. Coles: Your Honor, I think his testimony should be stricken on the ground of the objection that I made before while the jury was absent; there is nothing to show here that he knows anything about marijuana.

Mr. Pomeroy: If the Court please, my questions did not refer to marijuana. I think if you will look in the record I said, "Did you pass these sticks."

The Court: Just a minute. Whatever questions were answered were answered without objection. They are in evidence. You may continue with the cross examination.

The Witness Continued:

Mr. Banks introduced me to Mr. Davidson. I had seen Davidson a couple of times on Jackson Street.

(Testimony of Leonard Love.)

I can't remember the month I met him, but I think it was around the 15th or 16th of August 1943. I didn't meet him at the Seagull Tavern but Chester in the middle of August 1943 introduced me to him on Jackson Street. About the 1st of October 1943 I was arrested by the City and put in jail over some trouble with a woman. I was on parole at that time.

The parole officer didn't tell me but I knew that unless I got out on bail that my parole would be revoked. So I called up Mr. Banks from the jail house. I thought that my bail would be \$25.00, but later found out that it was \$125.00. Mr. Banks went good for that bail and I got out of jail. The bail was forfeited and I never paid Mr. Bank's back the money. That is the reason for the fight that I had with Mr. Banks. I hit him on the head which I had to do to stop the fight and from that day to this we haven't spoken.

Redirect Examination.

By Mr. Pomeroy:

"Mr. Banks told me that I owed him a \$150.00. He said that was for bail money. When he got me out, I started to sell the sticks, that was part of the bail to get me out. There was an arrangement made that I could sell for him and I sold and gave him the money. One night I spent the money and didn't have it so he started to fight and we ended up by my hitting him on the head."

(Testimony of Leonard Love.)

Recross Examination.

By Mr. Coles:

“I was in jail in October, I don’t know the exact time when my bail was forfeited, I don’t know whether it was the 18th of October or not. I can approximate the date when I was arrested. I think I was in jail 15 days. I believe it was in August, about the 15th. I am charged with having transferred on January 20th, 1944 five or six cigarettes, and on the 12th of February I am charged with 8½ cigarettes. I haven’t talked to Mr. Banks or have had anything to do with him since November 29th 1943. I pleaded guilty to those sticks, when Chester Banks introduced me to him about cigarettes. Yes, I pleaded guilty to the 8½ cigarettes. That was sale not possession. Yes, I pleaded guilty to one count that charged me with possession with marijuana cigarettes. I guess that the other counts were dismissed, although I don’t know. My sentence was put over to the 19th of May.”

Mr. Pomeroy: The Government rests.

Mr. Coles: Your Honor, I would like to make a motion.

The Court: The jury is again excused subject to call.

(Jury retires.)

Mr. Coles: May it please your Honor, I would like to make a motion for a directed verdict as to Counts 1, 2 and 3 of the indictment. One of the reasons is that I don’t think there is evidence here

sufficient to let this case to the jury as a matter of law. The only testimony at all in relation to marijuana comes from the lips of Townsend Davidson. The other witness did not testify what he handled was marijuana, but that he handled some sticks. He didn't say it was marijuana or what it was.

The Court: Counsel, I am satisfied, did say marijuana. I am satisfied if you will read all the questions and answers you will find Mr. Pomeroy said marijuana and the witness agreed. At least, in argument I will hear you on the theory that he did say that he handled marijuana.

Mr. Coles: I still think the testimony of the second witness should have been stricken if he so testified because there is nothing in the record at all that shows him to be a competent witness to testify that these cigarettes were marijuana cigarettes. I objected to that when the question was first raised.

The Court: I sustained it when you objected.

Mr. Coles: And I thought it was in the Court's mind and I thought at all times counsel for the Government would demonstrate that this person had some competency to testify what they were, and that is the reason I did not object to them at the time the questions were asked, because I had already raised my objection, and I thought that counsel had it in mind, and the Court having it in mind, that he would establish that before he asked the question again,—establish this man's competency. There was nothing at all to show that he was an

habitual user of cigarettes and can tell a marijuana cigarette from an alfalfa cigarette. I think I was entitled to have that testimony stricken on that ground. I have made every effort to protect the record and I do not wish to continue to object after it was brought to the Court's attention and Counsel's attention. I thought certainly Counsel would show it before the question was asked again. Now, counsel says he did not ask him or that he didn't state that it was marijuana. I have no definite recollection whether he said it was marijuana or what it was.

Mr. Pomeroy: I said sticks at all times.

Mr. Coles: I would like to renew my motion to strike that testimony from the record.

The Court: If the evidence is in, your motion comes too late. If it is not in, of course, it doesn't need to be stricken. I think it is in, and if in, the motion is denied. Its counsel's obligation, of course, not the Court's, to watch the testimony.

(Extended argument by Mr. Coles)

The Court: I am satisfied that the testimony of a user of marijuana for ten years is sufficient to establish it was marijuana. It has been brought out in this case by the government and verified by the defense that the witness was charged with marijuana and that he expects to plead guilty. That is simply a further guarantee that he knows what marijuana is. He has testified that he has used marijuana and that he got it. Unquestionably, if he

used it, he got it somewhere. He testified that after he had gotten a certain amount from the Defendant he met the defendant and the defendant told him to get it from Love. Now, Love comes in and says that the Defendant told him that Davidson was okey and that the Defendant furnished him marijuana or sticks, whichever we care to call it, after the witness Love was under substantial financial obligation to the Defendant.

I personally have said that I don't think there is any question of law involved in the case by virtues of Love's testimony; that is, if the testimony of the Defendant Davidson is not sufficient to show that there was marijuana, then of course the testimony of the Defendant Love is not sufficient. If the testimony of Davidson is enuf as a matter of law, we don't need the testimony of Love. But when we find it shown by the government, and again verified by the defendant, that Love has pleaded guilty in this Court to possession of Marijuana, that is a little bit more of a substantiating circumstance to indicate that he knows what marijuana is. At least, it would indicate that he had had some connection with marijuana. It might be that Love's testimony standing alone would be enuf to go to the jury. I don't think so. If we had the witness Love here and no other, with the testimony as given, I would not feel that your motion was not well taken. I may be a bit too technical. It might be that the circumstances combined with the testimony would indicate that he had enuf knowledge of marijuana

to put the Defendant on his proof if he wished to deny that it was marijuana. But Davidson certainly is qualified to testify what marijuana is. To say he was not would be to state that any one that had used tobacco for ten years was not qualified to testify that he had smoked a cigarette made of tobacco on a certain day.

I am satisfied there is sufficient evidence to go to the Jury. Whether the Jury is going to be convinced beyond all reasonable doubt by this testimony is something else again. They may not be impressed with the testimony of one who uses marijuana. They may not be impressed with the testimony of one who has pleaded guilty to the possession of marijuana and who states that that he had had a rather violent dispute with the defendant. But that is the jury's problem, not mine. If the Jury believes the witness Davidson and the witness Love and is convinced beyond all reasonable doubt that what they said was true, the jury would be obligated under their oath to find the defendant guilty. I am satisfied they would have the right so to do. The jury may not believe anything that has been testified so far by virtue of the connection of the witness with marijuana.

The motion is denied.

Mr. Coles: Exception.

The Court: Exception allowed.

OPENING STATEMENT BY MR. COLES.

CHESTER BANKS

Being first duly sworn testified in his own behalf as Defendant as follows:

My full name is Major Chester Banks and I was born in Roanoke, Virginia, April 16th, 1916. I have been away from home about 10 years. There were nine children in our family and after I went through the ninth grade at school I left home. I was in trouble when I was a kid, from running around with a lot of kids. When I left home I went to West Virginia to work in the coal mines. Then to Ohio and then out West. I was thrown in jail quite frequently during the depression, because I didn't have a job and for riding on freight trains. I was never convicted of anything serious, but was convicted of stealing when I was hungry. After being in California I came to Seattle in 1938 or 1939. I worked for a doctor in Tacoma doing janitor work in April 1940 I took out my seaman's papers and went to sea, working in the steward's department. I am a member of the Merchant Marine and have kept my membership since 1940. In 1942 I was interned in the Orient. I was in the hospital and when I got out, I returned to Seattle, and bought this Tavern from the Japanese and opened it in July of 1942. This tavern is located at 673 Jackson and the patrons are 99% colored. I have operated the place continuously with a license from 1942 until the present date. I made a trip or two in 1943 and left somebody else in charge. Exhibit

(Testimony of Chester Banks.)

A is my Seaman's discharge from the S. S. Joseph Meek. One shows when I got off and one when I got on. Exhibit C. is a continuation of the same discharge, it showed that I signed on, on the 29th day of June, 1943. (Defendants exhibit A and C admitted in evidence) [Printer's Note: Set out on pages 37 and 38.] Exhibit B is a release from the Chief Steward August 23rd, 1943. (Exhibit B admitted in evidence) [Printer's Note: Set out on page 39]. I reopened my place on the 15th of September, it took me about two weeks to get the place stocked up and ready for opening on September 15th, 1943. During the months of October and November of 1943 I was operating on a temporary license and I finally got my new license on December 1st, 1943. During this time, that November and December and October, I was under the strict observation of the Court.

I did not know Davidson's name until I was arrested and brought to the Federal Court House and they showed me a statement which he had signed. I had seen him before on Jackson Street in the company of Mr. Love, that is about the latter part of October. I saw him in front of the Tavern on Jackson Street, talking to Mr. Love, at that time I said something to Love about his trial and about the money he owed me for getting him out on bond. The next time I saw Davidson he came into my Tavern and inquired for Love. I should say that that was about the 5th of November I noticed that he was the only white person in the Tavern, so I went over and talked to him. I usually do that

(Testimony of Chester Banks.)

when white people come into the Tavern because I want to avoid any racial trouble I asked him what he was there for and he asked me if I knew Love. He also asked me if I knew a fellow named Brown. He told me that he was a musician, interested in colored music and we discussed records and music. I told him where he could get colored recordings, naming the place. My tavern is public and anyone can come into it. I met Mr. Love by just coming in and out of the place. I was never formally introduced to either Love or Davidson. Davidson told me that Love was a friend of his. I met Love before I met Davidson, about three weeks before. About the 1st of October he called me up at the Tavern one night about 9 o'clock. He asked me if I would do him a favor and put up \$25.00 bail, he said he was in jail and that because it was War time he could get a job and pay me back easily. He stated that he was out on parole and if he didn't get out of jail, he would be called before the Parole Board. I didn't want to let him have any money, because he wasn't a friend of mine, but I felt sorry for him. So I went to the Police Station with \$25.00 to get him released on bail. They told me it was a \$125.00 and said that I could go and see him. I went upstairs to see him and told him that I couldn't put up that money. He cried and I felt sorry and I went over to a Bail bond office and the bail bondsman put up his bail, which I guaranteed. His trial was set over to October 14th, which was two weeks from the time that he was arrested. During the

(Testimony of Chester Banks.)

two weeks he was supposed to pay me back but he didn't. One day I saw him on the street and he said I will pay you sometime but I haven't got it on me now and he said "If you will come on with me, I will pay you some of it". I went with him to the place next door and then he came from the back and hit me on the head. That was on the 29th day of November and that was the last time I spoke to him. I never used any marijuana and I am not familiar with it. I never did discuss marijuana with Davidson but talked music with him. I never did make any arrangements with Love to furnish sticks of any kind. The only trouble I had with him was over the money for bail. I never got any of my money back from him. When I was brought to jail on this case I saw Davidson and he asked me why I was there and we got to talking. I told him I was in for marijuana and he said he was in for marijuana too. He said his name was Townsend Davidson and I said to him that his name was on the warrant or certificate in my case. I asked him why and he said that he was asked a lot of questions and he didn't know and he was asked if he had been in my tavern and he said yes. I asked him what he had told them about me so that his name was on my papers and he said that "I never said anything to them. They said that they knew concerning you or something of me" which was just talk and I just didn't know what to do. "That is the only conversation I had with him in jail. I just couldn't understand the man. I never gave him

(Testimony of Chester Banks.)

any narcotics and never had any in my possession. During all the time that I was operating the Sea Gull Tavern nobody ever complained to me about marijuana or that there was any there. The Federal men have been in my place and asked me about women but never about marijuana. There never was any complaint to the liquor board about marijuana. There never was to my knowledge anybody in the place who had marijuana in his or her possession. On February the 15th there was a lot of colored people arrested for possession of marijuana but no one was arrested in my tavern. I was not arrested till March. That was about a week after the big raids in the South end of Seattle for marijuana. On the night of the big raid the officers came to my hotel room and I answered the door. They asked me who I was and I told them. They then went about their business. I am still in the Merchant Marine Service. I am a paid up member subject to call at any time.

Cross Examination

By Mr. Pomeroy:

I mean by paid up member that I am a member of the Union and while nobody can force me to go to Sea I will go if they call me.

I first went to sea in 1940. I shipped out on the North Sea, Cape Olivia. I was in the Orient 64 days. I got sick on a trip in 1942 in Manilla and placed under Japanese observation. Plaintiff's exhibit 1 is my hospital discharge. (Plaintiff's exhibit 1 admitted for evidence) [Printer's Note: Set out

(Testimony of Chester Banks.)

on pages 39 and 40]. I was in the hospital about 10 days, 4 days of it I was under observation. I am not married I am 28 years old, classified 2B. I was convicted in Roanoke, Virginia, for house-breaking and larceny and store breaking. While I received a year and a day sentence, I didn't stay there that long. In 1934 I was thrown in jail and I did not know what I was in for. On February 1935 I received a 2 year sentence in West Virginia but I don't know what the charges were, I received a 90 day sentence in jail for vagrancy in 1936 in California. In 1937 in El Centro, California I was convicted of petty theft. I was given 60 day suspended sentence in Tacoma for disorderly person. I didn't do any time. I don't know if people convicted of handling marijuana hang around my parlor. I never heard of any talk of marijuana there. First time I saw Davidson was in the store entrance when I stopped to talk to Love to ask him for the money that he owed me. I didn't talk to him about the trial except I told him that the trial was coming up on the 14th. Love was standing on the street taking to a stranger and I came up and asked him for my money, I didn't know Davidson. Love did not operate the shoe shine parlor next door to my knowledge. When Love hit me I went with him to the shoe shine, his coat was hanging in the back. I led the way to the shoe shine parlor although I don't know whether he was ahead of me or behind me. We started arguing about money, it was an open argument. If I was arguing about marijuana

(Testimony of Chester Banks.)

I wouldn't be openly arguing, there were no secrets. I denied going into the automobile and smoking a marijuana cigarette with Townsend Davidson. I deny having sold him two cigarettes on October 10th because I never bothered with that stuff. I don't fool with marijuana and I don't know anyone that has been arrested out of my place for marijuana except me.

Redirect Examination

By Mr. Coles:

"The certificate is dated April 16th, 1940 and that is when I got my registration with the U. S. Department of Commerce. I have seven thousand dollars invested in the tavern, that is all I got. In Sacramento I was walking up the street and I didn't have any money and they threw me in jail and I got a ninety day sentence to leave town. It was just that I was poor and colored. In El Centro, California I was working on a ranch covering cantaloupes at 2c a thousand. We weren't getting the 2c so we took some tomatoes to go into town to sell them. We were all put in jail for petty larceny. In 1942 I was in an argument about parking a car and I was arrested, that was when I came to Seattle."

Recross Examination

By Mr. Pomeroy:

"I was not arrested for living with a common prostitute in Tacoma. The Tacoma case was a continuing charge I was arrested for disorderly conduct. I left Tacoma and came back two months

(Testimony of Chester Banks.)

later and was arrested. (The Defendant rested and the Government offered no rebuttal)

Mr. Coles: At the conclusion of all the evidence I wish to renew my motion.

The Court: The record will show it is renewed and the motion is denied and exception allowed.

The Court instructed the jury. The jury returned a verdict as to the Defendant Chester Banks, finding him guilty on Counts I, II and III of the indictment which is more fully set out in the judgment and sentence appearing in the record herein; that thereafter motion for new trial was regularly made and brought on for hearing before the Court, argued and denied, all of which is set out more completely herein, to which denial the Defendant excepted at the time of entry of said order and exceptions were allowed; whereupon judgment was pronounced and the Defendant's sentence as will more fully appear in the Clerk's transcript.

Wherefore, the counsel for the Defendant, Chester Banks, present the foregoing Bill of Exceptions and pray that the same may be allowed as provided by the rules and practices of the Court.

JEFFREY HEIMAN,

Attorney for Defendant.

Office and P. O. Address:

415-1411 4th Avenue Building
Seattle, Washington

DEPARTMENT OF COMMERCE

Bureau of Marine Inspection and Navigation

CERTIFICATE OF DISCHARGE

Chester Banks
(Signature of Seaman)
William MacDonald
(Master of Vessel)

I Heroby Certify that the above entries were made by
me and are correct and that the signatures hereto
were witnessed by me.

Dated this 23 day of August, 1943.

WESLEY H. HAINES, S.D.
United States Shipping Commissioner
(or Master of Vessel)

Note.—Whenever a master performs the duties of the
shipping commissioner under this act, the master shall
sign the certification on the line designated for the
shipping commissioner's signature.

[Endorsed]: Filed Sept. 5, 1944.

Name of Seaman Chester Banks
(In full)
Citizenship U. S.
Certificate of Identification No. Z 202 404
Rating Galley Utility
(Capacity in which employed)
Date of Shipment 8-16-43
Place of Shipment Seattle, Wn.
Date of Discharge 8-23-43
Place of Discharge Seattle, Washington
Name of Ship S.S. Joseph L. Meek
Official No. 242 558 Class of Vessel Steam
(Steam, Motor, Sail or Barge)
Nature of Voyage Coastwise
(Foreign, Intercoastal or Coastwise)

DEFENDANT'S EXHIBIT "C"

DEPARTMENT OF COMMERCE

Bureau of Marine Inspection and Navigation

CERTIFICATE OF DISCHARGE

Chester Banks
(Signature of Seaman)

W. MacDonald
(Master of Vessel)

I Hereby Certify that the above entries were made by me and are correct and that the signatures hereto were witnessed by me.

Dated this 18 day of Aug., 1943.

V. V. KEIFER D

United States Shipping Commissioner
(or Master of Vessel)

Note.—Whenever a master performs the duties of the shipping commissioner under this act the master shall sign the certification on the line designated for the shipping commissioner's signature.

Name of Seaman Chester Banks
(In full)

Citizenship U.S.

Certificate of Identification No. Z 202404

Rating Galley Utility
(Capacity in which employed)

Date of Shipment 6/29/43

Place of Shipment Seattle, Wn.

Date of Discharge 8/15/43

Place of Discharge Seattle, Wn.

Name of Ship Joseph L. Meek

Official No. 242558 Class of Vessel Steam
(Steam, Motor, Sail or Barge)

Nature of Voyage Coastwise
(Foreign, Intercoastal or Coastwise)

Serial No. G 776382

[Endorsed]: Filed Sept. 5, 1944.

DEFENDANT'S EXHIBIT "B"

Shipping Commission

8/23/43

Please sign off articles of S. S. Joseph L. Meek, bearer, Chester Banks galley utility—signed off by mutual consent.

M. HAMMER

Steward

[Endorsed]: Filed Sept. 5, 1944.

PLAINTIFF'S EXHIBIT No. 1

Treasury Department

No. 23-122

U. S. P. H. S.—Form 1918

March, 1925

CERTIFICATE OF DISCHARGE

From U. S. Marine Hospital At Seattle, Wash.

(Marine hospital or relief station)

May 4, 1942

This is to Certify that Banks Chester

(Surname)

(First)

(Middle)

was treated in the Hospital as a Hospital patient

(Hospital or dispensary)

(Hospital or out)

from 30-Apr-42, 19.....

(Date of admission)

to 4-May-42, 19.....

(Date of discharge)

Class of beneficiary: M.S.

Condition on discharge: Improved.

Reason for discharge: Further hospitalization unnecessary.

Certified service on last vessel: 16-Mar-42 21-Apr-42

Name of vessel: SS Olympic

Description Remarks:.....

Nativity Roanoke, Va.

Date of birth 16-Apr-1916

Color negro

R. M. GRIMM,

R. M. Grimm,

Complexion dark

Medical Director

Height 5' 9½"

CHESTER BANKS

Eyes brown

Chester Banks

Hair black

(Signature of patient)

Note.—Retain copy for station files.

[Endorsed]: Filed Sept. 5, 1944.

State of Washington,

County of King—ss.

I, Lloyd L. Black, Judge of the District Court of the United States for the Western District of Washington, Northern Division, and Judge before whom the foregoing cause entitled, "United States of America, Plaintiff, versus Chester Banks, do hereby certify that the matters and proceedings embodied in the foregoing Bill of Exceptions are matters and proceedings occurring in the said cause and the same are hereby made a part of the record therein; and I further certify that the said Bill of Exceptions, together with all of the exhibits and other written evidence on file in said causes, and

attached to said Bill of Exceptions, contains all the material fact, matters and proceedings heretofore occurring in the said causes and not already a part of the record therein; and said Bill of Exceptions and the exhibits attached thereto, are hereby made a part of the record in said causes, the Clerk of the Court being hereby instructed to attach all the exhibits thereto.

Counsel for the respective parties being present and concurring herein, I have this day signed this Bill of Exceptions.

In witness whereof, I have hereunto set my hand this 28th day of August, 1944.

LLOYD L. BLACK,

Judge of the District Court
of the United States.

[Endorsed]: Filed Aug. 28, 1944, Judson W. Shorett, Clerk. By Percy Maddux, Deputy.

[Endorsed]: Filed Sept. 5, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: No. 10804. United States Circuit Court of Appeals for the Ninth Circuit. Chester Banks, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed September 5, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the District Court of the United States
for the Western District of Washington
Northern Division

No. 46311

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER BANKS,

Defendant.

ASSIGNMENT OF ERRORS

Comes now the Defendant and files herein his assignment of Errors:

I.

The witness Townsend testified on page two of the Bill of Exceptions that he smoked a marijuana cigarette and Mr. Coles objected (page two of the Bill of Exceptions) to his testimony with reference to the fact that the cigarette was marijuana and the Court overruled the objections. A motion was made to strike the testimony of Mr. Townsend and the motion was denied. (Bill of exceptions page two.) This was an error.

II.

The Court committed error in refusing to sustain the motion of Mr. Coles (Defense Counsel) made (page 7 of the Bill of Exceptions) for a directed verdict as to Counts 1, 2 and 3 of the Indictment on the grounds that there was not sufficient evidence to go to the jury.

III.

The Court erred in failing to strike the testimony of the Witness Love after the motion to strike was duly made by Mr. Coles (Bill of Exceptions page 7). The motion was denied and exception taken (Bill of Exceptions page 10).

IV.

The Court erred in failing to sustain the motion of Mr. Coles made at the conclusion of the introduction of all the evidence the Court having stated "The record will show that it is renewed and the motion is denied and exception allowed."

V.

The Court erred in failing to grant the Defendant a New Trial after the motion for a new trial was timely made and argued to the Court.

VI.

The Court erred in not granting the Defendant's motion in arrest of Judgment.

JEFFREY HEIMAN,

Attorney for the Defendant.

Received a copy of the within Assignment of Errors this 31st day of Aug., 1944.

J. CHARLES DENNIS

Attorney for Plaintiff

[Endorsed]: Filed Aug. 31, 1944. Judson W. Shorett. By Truman Egger, Deputy.

[Endorsed]: Filed Sept. 6, 1944. Paul P. O'Brien, Clerk.

